

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

DERRICK HOWARD

PLAINTIFF

VS.

CIVIL ACTION NO. 3:04CV999LN

**COMMISSIONER ROBERT JOHNSON
and CAPTAIN POWELL**

DEFENDANTS

ORDER

This matter came before the court on reconsideration of the Report and Recommendation issued by the undersigned on November 29, 2005, in which the undersigned recommended dismissal of this action based on the application of the one-year statute of limitations for claims of false imprisonment. Miss. Code Ann. § 15-1-35 (1972). Having reviewed this opinion further, the undersigned is of the opinion that application of that statute was in error, as the three-year limitations period provided for by § 15-1-49 (1972) applies to all cases brought under 42 U.S.C. § 1983. *Wilson v. Garcia*, 471 U.S. 261 (1985); *James v. Sadler*, 909 F.2d 834 (5th Cir. 1990). Therefore, dismissal of this action is not appropriate at this time, and the earlier Report and Recommendation issued by the undersigned will be withdrawn.

The court issued summonses to the Defendants on February 4, 2005, and both were returned unexecuted, as neither Defendant could be found at the addresses given by the Plaintiff. Apparently, both Defendants have left their former employment. Although the Plaintiff stated in a pleading submitted on November 14, 2005, that Captain Powell, who was formerly employed at the Pike County Community Work Center, “remains part of MDOC staff,” Howard has not given the court the location at which this Defendant may be found. Therefore, the Plaintiff will be given a reasonable period within which to provide the court with new addresses for the Defendants, so that

summonses may be reissued for them. Failure to so notify the court may result in a recommendation that this matter be dismissed for failure to prosecute.

IT IS, THEREFORE, ORDERED that the Report and Recommendation entered in this matter on November 29, 2005, is hereby **withdrawn**.

IT IS FURTHER ORDERED that the Plaintiff notify the court, on or before February 14, 2006, of the address where the Defendants may be served with process.

IT IS SO ORDERED, this the 4th day of January, 2006.

S/Alfred G. Nicols, Jr.
UNITED STATES MAGISTRATE JUDGE